

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Jeffrey K. Bartels Del. ID # 2249
Kenneth William Richmond *pro hac vice* Attorneys for Plaintiffs
401 South Maryland Avenue
Wilmington, DE 19804
302-995-6211

Estate of William J. Cox, by
ANGELIA M. COX, Admin.
6415 Chew Avenue
Philadelphia, PA 19119
Plaintiff
v

Thomas L. Carroll, Warden
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977
Defendant

&
First Correctional Medical-Delaware, LLC.
P. O. Box 69370
Tucson, Arizona 85737-0015
Defendant

and
Commissioner Stanley Taylor
Delaware Department of Corrections
Administration Building
245 McKee Road
Dover, Delaware 19904
Defendant
and

Joyce Talley, Bureau Chief of
Management Services
Delaware Department of Corrections
Administration Building
245 McKee Road
Dover, Delaware 19904
Defendant

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

I. JURISDICTION

1. 28 U.S.C.S. 1331 Federal Question: This is a civil action brought pursuant to 42 U.S.C.S. 1983 alleging that each of the defendants named above, while acting under color of state law, in the manner described below, violated the decedent's right under U.S. Const. amend. VIII, to be free of the infliction of cruel and unusual punishment or death by the intentional denial of medical treatment.

II. PARTIES

2. Plaintiff, Angelia M. Cox is the Administratrix of the Estate of William J. Cox, decedent pursuant to letters of administration issued by the Register of Wills of Kent County Delaware on October 18, 2005 at Number F05022004WJC. William J. Cox is survived by Daughters Kimberly Cox Rauscher, Alicia Cox Shockley and Admin. Angelia M. Cox.

3. Defendant Thomas L. Carroll was, at all times relevant, the Warden of the Delaware Correctional Center at Smyrna, Delaware.

4. Defendant First Correctional Medical-Delaware, LLC. advertises itself as being an expert in prison medical care with its principal offices at the address appearing in the caption. At all times relevant hereto, it was the contractor during all relevant periods herein for the only medical care available to inmates confined to the Delaware Correctional Center in Smyrna, Delaware by virtue of an

agreement dated June 17, 2002 by and between Defendant Stanley Taylor, Commissioner and First Correctional Medical Services.

5. Defendant Stanley Taylor is the Commissioner of Corrections for the State of Delaware who, on or about June 17, 2002 entered into an Agreement Defendant First Correctional Medical-Delaware, LLC (hereafter referred to as “FCM”) for the provision of comprehensive medical care for inmates incarcerated by the Delaware Department of Corrections.

6. Defendant Joyce Talley is the Bureau Chief for the Bureau of Management Services, Delaware Department of Corrections, who was specifically charged with oversight of inmate health care services and ensuring the most effective and lowest cost delivery of medical services to incarcerated offenders.

THE FACTS:

7. Decedent William J. Cox, born February 15, 1954, and based upon information and belief, was confined to the Delaware Department of Corrections in June, 2003 for Contempt of Court and additionally for a third offence of Driving Under the Influence with a Revoked License and commenced serving a sentence in November, 2003 at the Delaware Corrections Center.

8. On or about November 7, 2003, Decedent Cox is believed to have been medically screened as a sentenced inmate at the Delaware Corrections Center by staff under the direction, supervision and control of Defendant First Correctional Medical at which time, the decedent advised the staff of his history of insulin dependent diabetes, hepatitis C, cirrhosis of the liver and abdominal pain after which the decedent was taken to Kent General Hospital in Dover for an abdominal ultrasound examination and blood chemistry on or about November 12, 2003.

9. The findings of the radiologist and laboratory at Kent General Hospital confirmed diseased liver with elevated (ALT) (AST) and blocked bile ducts (ALK PHOS) or cholecystitis.

10. In spite of the findings, the decedent Cox was denied special diet, diuretic medications, paracentesis to remove abdominal fluid or other remedial measures to divert abdominal fluid from the decedent's abdominal cavity to the point where upon discharge on April 26, 2004, the decedent Cox had a stomach grossly and obviously distended with nine lbs of fluid.

11. On April 28, 2004, the Decedent was admitted to Kent County Hospital emergently and lapsed into a coma on April 29, 2004, after which he was transferred to a hospice until he expired on May 2, 2004.

12. It is believed and therefore averred that the deliberate failure to treat or provide medical care to the decedent was a direct result of the cost containment practices and policies of FCM and the Defendant Stanley Taylor and that treatment of decedent Cox's medical condition was deliberately withheld pursuant to this policy.

13. It is believed and therefore averred that the general cost containment practices of FCM and Defendant Taylor caused inadequate medical staffing, inadequate training, and reliance upon the judgment of persons other than qualified physicians, and psychiatrists to make medical decisions, refusal to provide required transport to needed off site medical facilities as required to treat decedent Cox all of which resulted in a policy of deliberate denial of access to the medical care decedent clearly required.

14.. At all times relevant hereto, Defendants Joyce Talley and Thomas L. Carroll, assumed a duty to insure efficient and effective delivery of health care to decedent Cox, and in spite of numerous inmate complaints, numerous inmate deaths due to "lengthy illnesses" and the identification of "medical issues" under the contract, both Thomas L. Carroll and Joyce Talley remained deliberately indifferent to the medical plight of inmates at Delaware Correctional Center, and to decedent Cox in particular by failing to order or require inmates to receive adequate, needed medical care when they had a duty to do so.

15. In addition to the foregoing, the specific failure to provide access to required diagnostic care in the case of the decedent resulted from a contractual agreement between Defendant Taylor and FCM and the failure to insure efficient and effective medical care under the contract created a policy of deliberate indifference to the decedent's medical plight in violation of the proscriptions contained in the United States Constitution, amend. VIII.

16. In addition to the foregoing, the actions and inactions of the FCM staff, Defendants Taylor, Carroll and Talley with respect to the decedent, fell well below the accepted standard of care in correctional facilities. The failure to supervise, inspect, investigate or inquire concerning the declining condition of decedent Cox, coupled with voluminous medical grievances filed by the inmate population in general constitutes gross negligence under the circumstances and unconstitutional deliberate indifference to a serious medical need which became obvious in the specific case of decedent Cox.

17. At all times relevant hereto, Defendants Taylor, Talley, Carroll and FCM assumed a duty to insure efficient and effective delivery of health care to decedent Cox, and in spite of numerous inmate complaints, numerous inmate deaths due to "lengthy illnesses" and the identification of "medical issues" under the contract, Defendants Taylor, Talley and Carroll remained deliberately

indifferent to the medical plight of inmates in general, and decedent Cox in particular by failing to order or require inmates to receive adequate, needed medical care when they had a duty to do so.

17. As a direct and proximate result of the actions and inactions of each of the defendants, jointly and severally as described above, the decedent was deprived of protections afforded under the United States Constitution, amend. VIII to be free of cruel and unusual punishment.

18. As a further result of the conduct as described above, decedent suffered intense pain, humiliation, immobilization, confusion, anxiety, frustration, and fear until losing consciousness and ultimately, his life, over a period of four or more months.

19. As a further result of the conduct described above, the decedent suffered loss of earnings for the remainder of his expected life.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally together with punitive damages, as determined by the fact finder and assessment of costs and attorney fees.

Respectfully submitted

/s/

Jeffrey K. Bartels

Kenneth William Richmond, *pro hac vice*

401 South Maryland Ave.

Wilmington, DE 19804

302-995-6211

C E R T I F I C A T I O N

Kenneth William Richmond, Counsel for the Plaintiff in the foregoing action certifies that he has investigated the facts underlying the allegations contained in the attached Complaint and that each of the allegations set forth are true and correct according to his best information and belief.

Dated April 25, 2006

/s/

Kenneth William Richmond
2019 Walnut Street
Philadelphia, PA 19103
215-523-9200

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Estate of William J. Cox, by Angelia Cox, Admn. 6415 Chew Avenue Philadelphia, PA 19119 (b) County of Residence of First Listed Plaintiff <u>Philadelphia, PA</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Jeffrey K. Bartels, Esq., 401 S. Maryland Ave., Wilmington, DE 19804 Phone: 302-995-6211	DEFENDANTS Thomas L. Carroll, Warden DCC, First Correctional Medical, LLC, Comm. Stanley Taylor, Bureau Chief Joyce Talley County of Residence of First Listed Defendant <u>New Castle, DE</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) Marc Neidjelski, Dep. Atty. General, Delaware Dept. of Justice 820 N. French Street, Wilmington, DE 19801
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input checked="" type="checkbox"/> 1</td> <td style="width:47%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input checked="" type="checkbox"/> 555 Prison Condition	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 USCS 1983</u> Brief description of cause: <u>Prisoner Rights (VIII Amend. Constitution)</u>

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE <u>April 26, 2006</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Jeffrey Bartels</u>
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FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

06 - 278

Civil Action No. _____

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 4 COPIES OF AO FORM 85.

4/28/06

(Date forms issued)

David W. K. Howard

(Signature of Party or their Representative)

Estate of Cox.

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action